

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

WARD FRANCIS WEAVER,

Petitioner,

vs.

Vincent Cullen, as Warden of San Quentin
State Prison,

Respondent.

Case No. 1:02-cv-05583-AWI

DEATH PENALTY CASE

ORDER FOLLOWING PHASE III CMC

DATE: August 24, 2010

TIME: 1:30 p.m.

Courtroom Two

This matter came on for a Phase III Case Management Conference (CMC) on August 24, 2010 at 1:30 p.m. in the above-entitled court, the Honorable Anthony W. Ishii presiding. Petitioner Ward Francis Weaver (“Weaver”) was represented by appointed attorneys Anne Lackey of the Habeas Corpus Resource Center and private attorney Karen S. Schryver, both of whom appeared telephonically. Respondent Vincent Cullen, as Warden of San Quentin State Prison (the “Warden”), was represented by his attorney of record Deputy Attorney General Leslie Westmoreland, who appeared in person.

The purpose of the CMC was to establish a briefing schedule for Claims 1 and 2 of Weaver’s amended petition and a budget for Weaver’s litigation team to complete the briefing for these claims. Proceedings to discuss the briefing schedule were conducted with both parties present and publicly reported. The budget discussion with Weaver’s attorneys was conducted confidentially and ex parte to protect attorney work product and the attorney client privilege. A sealed order authorizing a Phase III budget for Weaver’s litigation team is filed concurrently herewith.

Claims 1 and 2 allege denial of counsel at critical stages of Weaver’s state trial and the failure of his trial counsel to subject the prosecution to meaningful adversarial testing under *Cronic v. United*

1 *States*, 466 U.S. 648, 659 (1984). These claims stem from alleged mental and physical illnesses of
2 Weaver's lead trial counsel, the late David Huffman, caused by his alcoholism and Vietnam combat
3 induced post-traumatic stress disorder as well as a conflict of interest of both Mr. Huffman and wife/co-
4 counsel Donnalee Huffman. Briefing of these claims is to include legal argument supporting the claims
5 as well as any requests for further evidentiary development.

6 Weaver requested 120 days within which to file his opening brief, the Warden requested the
7 same amount of time to file his opposition brief, and Weaver asked for 60 days within which to file his
8 reply brief. Weaver requested that the briefing schedule not commence until the Court approved a
9 budget, so his litigation team would know exactly which tasks would be authorized. Weaver also
10 clarified that he would like to engage in informal discussions with the Warden about obtaining third-
11 party discovery during his briefing efforts. He stated he would like for informal discovery to be
12 complete no later than 30 days before his opening brief is due. In the event informal discovery is not
13 successful, Weaver will request discovery under Rule 6 of the Rules Governing § 2254 Cases in his
14 opening brief.

15 For good cause appearing:

- 16 1. Weaver shall file his opening brief setting forth legal argument in support of and requests for
17 further evidentiary to establish Claims 1 and 2 of the petition within 120 days of the filing of this
18 order;
- 19 2. The Warden shall file his opposing brief with 120 days from the filing of Weaver's opening
20 brief; and
- 21 3. Weaver shall file his reply brief within 60 days from the filing of the Warden's opposing brief.
22 Unless further proceedings are necessary, the Court will issue a memorandum decision and order on the
23 submitted briefing. In the event further briefing or a hearing is necessary, the Court will advise the
24 parties in writing.

25 IT IS SO ORDERED.

26 DATE: September 3, 2010

/s/ Anthony W. Ishii
Anthony W. Ishii
United States District Judge